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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL 15 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

)

)

Policies and Rules Concerning

)

Children's Television Programming

)

MM Docket 93-48

)

Revision of Programming Policies

)

for Television Broadcast Stations

)

COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

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July 15, 1994

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Executive Summary

The National Association of Broadcasters submits that it has been demonstrated by solid research in the recent NAB Study that television licensees have responded to the Children's Television Act by broadcasting a significantly increased amount (81%) of educational and informational children's programming from fall 1990 to fall 1993. The average station is now airing 3-2/3 hours of regularly-scheduled educational children's programming per week, up from 2 hours in 1990. This increase is seen across all markets and all types of stations. The only other up-to-date research submitted to the Commission on the amount of educational fare television stations air, that of INTV, similarly shows a dramatic increase. There is thus no basis in the record before the Commission to support a shift to quantitative regulatory requirements.

The NAB Study and the INTV study show that the vast amount of children's educational programming is being aired at appropriate times for child viewing. 97% of all regularly-scheduled educational children's programs air after 6:00AM, with the vast majority, 80.6%, airing after 7:00AM. It is not at all inappropriate that *some* educational shows are aired and available to the great numbers of children watching television at early morning hours. 5% *of all children* are watching television at 6:00AM and 6.3% *of all children* are viewing at 6:30AM.

The Center for Media Education in its testimony and attached "Study" presents a distorted picture of the broadcast children's marketplace and of broadcasters' treatment of educational children's shows within that marketplace and does so on the basis of insupportable, unscientific and undocumented research. One, CME in its oral testimony and in its "Study" reference separate informal analyses of scheduling from TV Guide, but has not submitted such an analysis to the FCC or otherwise released it. NAB's repeated requests for such analyses or other information about them were ignored by CME. Any comments about these analyses should be disregarded by the Commission.

Two, CME based its FCC testimony on an attached “Study” which is based on undocumented, anonymous interviews primarily with people whose educational shows failed in the marketplace, hardly objective observers. Throughout this “study” and its testimony, CME over-generalizes to the entire industry “major barriers” and “troubling practices” that are not supported as such in its “study” and that cannot be confirmed by investigations NAB has undertaken. NAB concludes that allegations of station participation in toy profits or cash payments for scheduling are non-existent or *very* unusual and that related time buys by advertisers in exchange for favorable scheduling involve, at most, a small segment of the market, not the “general practice” in the industry that CME suggests is the death knell of educational shows. NAB’s comments further recite CME’s over-generalizations and misleading inferences.

Both the syndication programming marketplace and the television networks are responding to the demand for educational and informational programming with greatly increased supply since 1990. In fact, once the Rushnell study of network-supplied programming is adjusted for errors and “apples-to-apples” comparisons, as is done in an attached NAB evaluation, it is apparent that the networks are now supplying *more* educational programming than in the previous high water mark of 1980.

Broadcasters are presenting greatly increased amounts of educational children’s programming despite the low viewership and profitability of educational shows. An NAB listing of Nielsen ratings shows that audience ratings for the vast majority of educational children’s programs are much lower than the ratings for pure entertainment shows. And audience ratings produce the only revenue stream, advertising dollars, to pay for broadcast station programming.

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COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

On June 28, 1994, the Federal Communications Commission held an *en banc* hearing on children's television, specifically on the issues raised in the pending children's television proceeding. A representative of the National Association of Broadcasters¹ was a participant at the hearing, presenting oral remarks (which closely followed previously submitted written testimony) and responding to questions. NAB believes that the hearing elicited a variety of opinion and factual presentations and updating of the record that will be useful to the Commission as it reviews and assesses the issues raised in its pending *Notice of Inquiry*.²

NAB takes this opportunity to respond to some views presented at the hearing, noting that responses to many issues were made during the hearing and thus are already part of the record before the Commission. In particular, NAB rests on the hearing

¹ NAB is a nonprofit, incorporated association which serves and represents America's radio and television broadcast stations and networks.

² *Notice of Inquiry* in MM Docket 93-48, 8 FCC Rcd 1841 (1993).

testimony of broadcasters and on our comments filed in response to the *Notice of Inquiry* on the issue of the definition of educational and informational programming. NAB here comments on issues raised about the amount and scheduling of educational and informational programming broadcasters present and on the economics of children's educational programming.

I. It Has Been Demonstrated By Solid Research That Television Licensees Have Responded to the Children's Television Act By Broadcasting a Significantly Increased Amount (81%) of Educational and Informational Children's Programming.
NAB recently completed a study of the amount and scheduling of educational and

informational children's programming television licensees are airing now, as compared to that aired before the Children's Television Act took effect. That study, which was described at the hearing and filed in this docket³, shows an 81% increase in the broadcast of regularly-scheduled educational and informational programming for children from fall 1990 to fall 1993. The average station is now airing 3-2/3 hours of regularly-scheduled educational and informational children's programming per week. In 1990 the average station was airing 2 hours of educational fare per week. This increase is seen across all markets and all types of stations.⁴ And, according to the study, the average station is broadcasting 86.4% more hours of educational and informational specials for children.⁵

³ The 1990 Children's Television Act: Its Impact on the Amount of Educational and Informational Programming, National Association of Broadcasters, June 1994, filed in MM Docket 93-48, June 27, 1994 ("NAB Study"), here attached as Attachment 1.

⁴ *Id.* at 3, 7 and at Figures 2, 4.

⁵ *Id.* at Figure 1.

Similarly documenting the dramatic growth in the airing of educational and informational programming is the study reported by the Association of Independent Television Stations and described in its testimony at the *en banc* hearing. INTV's study reports that its independent station members, on average, are broadcasting over 4-1/2 hours of regularly scheduled children's educational shows per week during the first quarter of 1994.⁶ And these numbers do not include the educational specials on independent stations which more than tripled from 1990 to 1994.⁷

What these studies demonstrate is that stations, on average and of every market and type, have significantly increased the amount of educational and informational children's programming broadcast since the Children's Television Act took effect. The central question asked by the FCC's *Notice of Inquiry* in this proceeding was whether a change was needed in the FCC's rules to achieve the objective of the Act to "increase the amount of educational and informational broadcast television programming available to children."⁸ The *Notice*, issued in March of 1993, observed "little change in available programming that addresses the needs of the child audience."⁹ Today, we have ample evidence of change and of not only an "increase" in available programming, but of a dramatic increase. Clearly, the Act is working. The FCC's statement of purpose and

⁶ See Statement of Peter Walker, June 28, 1994, filed in MM Docket No. 93-48, June 15, 1994 ("INTV Testimony") at 4 ("INTV Study").

⁷ *Id.* at 5.

⁸ *Notice of Inquiry, supra*, at 1.

⁹ *Id.* at 3.

resolve is working. There is simply no basis in the evidence before the Commission to support a shift to more specific quantitative regulatory requirements.

II. The Vast Amount of Children's Educational Programming Is Being Aired At Appropriate Times for Child Viewing.

NAB's study also shows that this greatly increased amount of educational programming is being scheduled at times appropriate for children's viewing. Ninety-seven percent of all regularly-scheduled educational children's programming is airing after 6:00 AM, with the vast majority, 80.6%, airing after 7:00AM. NAB Study, *supra* at p. 7 and Figure 6.

While the vast majority of educational shows air after 7:00AM, it is not at all inappropriate, as has been suggested by some witnesses, that *some* educational shows are aired and available to children at even earlier times. Great numbers of children are up and watching television very early in the morning, particularly younger children, and it is appropriate that they can view educational programming then, as well as at other times.

In fact, as seen in Attachment 2A to these comments,¹⁰ there are approximately 1-1/2 million children age 2-11 watching television Monday-Friday at 6:00AM, which is approximately 5% *of all children*. At 6:30AM, there are approximately 2.4 million children age 2-11 watching television Monday-Friday, which is 6.3% *of all children*. In comparison, the *largest* daytime children's audience for the entire week is 10:00AM on

¹⁰ *Kids 2-11 Television Viewing*, Nielsen peoplemeters, 4Q'93, here attached as Attachment 2A.

Saturday morning when only 29.6% *of all children* are watching. Thus, depending on a station's other children's programs and other programming constraints (notably general news and information programs), a 6AM or 6:30AM time slot may be appropriate and serve a child audience with educational programming *before* family viewing of morning news shows occupies the television set. And, as stated above, over 80% of educational fare airs after 7:00AM.

It is likewise not inappropriate that roughly 2/3 of the educational and informational children's programming is presented on the weekend, with roughly 1/3 aired during the week.¹¹ The airing of children's shows more or less follows children's availability in the audience, which is heaviest on weekends.¹² As is to be expected, most children are in school or occupied with school-related activities during the week.

As is typical of a functioning marketplace, certain niches are served by certain service providers, with other niches served by other providers. In the television marketplace, network affiliates have provided more and more general news and information during weekday morning and late afternoon/early evening time periods, with the bulk of their children's programming on the weekends during peak children's viewing, and with the now-numerous independent stations providing a great amount of children's programming during the week. And there is of course the addition of public broadcasting and cable programming. This market balance is serving all audiences with abundance and

¹¹ See Attachment 3.

¹² See Attachment 2B to see that the largest day time child audiences are on Saturday and Sunday mornings.

choice, and clearly should not be tampered with by government direction as to what days or times any particular programming should be aired.

III. The Center for Media Education Presents a Distorted Picture of the Broadcast Children's Marketplace and of Broadcasters' Treatment of Educational Children's Shows Within That Marketplace and Does So on the Basis of Insupportable, Unscientific and Undocumented Research.

The Center for Media Education ("CME"), from its first Report in 1992 indicting the entire broadcast industry for the first three months of some stations' reporting under the Act to its 1994 "study" of anonymous producers of failed children's shows to its undocumented, unfiled and unobtainable "informal analyses" of scheduling has presented distorted, overgeneralized and inaccurate pictures of broadcasters' compliance with the Children Television Act and of the broadcast children's marketplace.

NAB suggest that the Commission consider CME's filings for what they are: distortions, overgeneralizations and innuendoes supported by undocumented, anonymous and unavailable bases.

First, CME, in its oral testimony (but not its written submitted testimony) and in its attached "study"¹³ reference and cite statistics on scheduling from "an informal analysis of *TV Guide* magazines from the top five television markets" and "a separate analysis of the top 20 TV markets."¹⁴ CME, as of July 13, 1994, had not submitted any such "analyses"

¹³ The Impact of the Children's Television Act on the Broadcast Market, Auferheide and Montgomery, filed in MM Docket No. 93-48, June 15, 1994 ("CME 'Study'").

¹⁴ CME "Study," *id.* at 15. Similar references are made in CME's June 10, 1994 Congressional testimony as well as in its June 28, 1994 press release.

to the FCC, nor apparently otherwise had released such an “analyses.” NAB, in order to respond to these “analyses” for the record, requested a copy of the study or at least further information about this analysis from CME. No information was furnished, nor were phone calls about this returned. Thus the bases for CME’s comments on scheduling are unavailable to parties or to the FCC. NAB requests that the Commission consider any references to this analysis by CME to be undocumented and therefore unreliable.

Second, CME based its testimony at the FCC hearings, as well as its testimony to the House Telecommunications Subcommittee on June 10, 1994, on a purported “study” which is based on undocumented, anonymous interviews “primarily with people who have attempted to produce and/or distribute programming designed to comply with the new law,”¹⁵ i.e. with people whose shows weren’t bought or whose shows failed. Throughout this “study” and throughout its testimony to the Commission, CME over-generalizes to the entire industry “major barriers,” “clear patterns,” “troubling practices” and “common practice” that are not supported as such in its “study” and that cannot be confirmed by investigations NAB has undertaken.

The CME “Study” suggests that there are industry-wide market barriers making it “almost impossible for educational and informational programming to gain entry and survive in the marketplace.”¹⁶ It relies for this conclusion on the opinions of producers whose shows have failed -- sources who hardly would be expected to be laudatory about a marketplace that rejected their product. CME neglects to note, however, that almost 75%

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 1, 17.

of all television shows fail,¹⁷ and thus assigns as a pernicious practice aimed at educational shows or the “weak commitment” of broadcasters the typical failure rate of industry programs generally.

Further, CME’s “Study” suggests that it is the general practice in the industry that highly competitive toy-related entertainment shows force new educational shows into “predawn” hours by “elaborate deals,” including related time buys, cash payments and station participation in toy profits, to get their shows into the best time slots. After some investigation, NAB has not found knowledge of station participation in toy profits, or of cash payments to stations for particular time slots. And, the practice of related time buys by toy advertisers for favorable scheduling of a related show does not occur with network television shows, does not occur with the dominant syndicators, Fox/Warner Bros. and Disney, and does not involve network affiliates. Moreover, NAB’s witness, Paul La Camera of WCVB-TV in Boston has stated that, after asking others in his market, he concludes that such a practice doesn’t occur in Boston, the 6th largest TV market. NAB thus concludes that station participation in toy profits or cash payments for scheduling are non-existent or *very* unusual and that related time buys by advertisers in exchange for favorable scheduling involve, at most, a small segment of the market. These activities are not the “general practice” in the industry that CME suggests is the death knell of educational shows.

A small but further example of CME’s misleading inferences is its suggestion

¹⁷ INTV Testimony, *supra* at 3.

that, compounding the “troubling business practices” above, is the fact that “these [toy-based] programs [are] given *free* to the stations.”¹⁸ To the contrary, stations “pay” for barter programs, as CME well knows, with the value of half of the advertising inventory in that show. Stations are in fact required by generally accepted accounting rules to value the cost of barter programming.¹⁹

As a further example of a misleading generalization, CME’s testimony²⁰ at the *en banc* hearing stated that

“[educational] programs are routinely scheduled in marginal time slots when it is often impossible for children to see them. . . . It is *common practice* for a station to put its ‘compliance *show*’ on at 6:00 AM or even 5:00 AM just so it can tell the FCC ‘it has *a show*’.”²¹

NAB suggests that such over-generalizations and misleading inferences are rife in CME’s testimony and throughout the CME Study.” Here, CME is generalizing to the whole industry the inference that stations “commonly” have only one educational show and that “they,” “routinely” schedule their “one show” at 5:00 or 6:00 AM. NAB knows, CME knows and the Commission knows that this is blatantly not true.²²

¹⁸ CME Testimony at 2, *cf.* CME “Study” at 18.

¹⁹ See, Byre Hopkins and Wayne Franvendield, “Trade and Barter Transactions and Related Accounting,” included in Understanding Broadcast & Cable Finance, Andrew Gordon, ed., BC FM Press, 1994 pp. 130-152

²⁰ Testimony of Dr. Kathryn C. Montgomery, June 28, 1994, filed in MM Docket No. 93-48, June 15, 1994 (“CME Testimony”).

²¹ *Id.* at 2 (emphasis supplied).

²² See *NAB Study, supra*; *INTV Study, supra*; section II, *supra* and *Notice of Inquiry, supra* at fn 12.

In addition, the CME “Study” uses the obviously lower budgets for locally produced educational programs which are then syndicated in comparison with obviously much greater budgets for national network shows to suggest some pernicious market practice, when all such a comparison suggests is the mixing of apples and oranges, the mixing of local vs. national shows, the mixing of the network market with the syndicated market.

NAB suggests that the unscientific, undocumented research methods and the inaccurate, sweeping generalizations of the CME “Study” serve to completely discredit the “study” and the testimony based upon it. CME, once again, has presented a distorted, unfair picture of broadcasters’ responses to the Children’s Television Act.

Third, CME continues to refer to its 1992 Report²³ to suggest that broadcasters “were *simply* relabeling cartoons such as *The Jetsons* and *G.I. Joe* as educational.”²⁴ Its implication is now, as then, that broadcasters were attempting to satisfy their obligations under the Act with re-defined cartoons. CME, in that September 1992 Report and in later references, never mentions that its Report examined the *first* renewals applications filed for the *first three months of reporting under the Act*. And, as NAB has commented previously, “some” stations may have over-included in their first listings, but that virtually all stations had programming of real educational merit listed as well. That of course CME never mentions.

²³ A Report on Station Compliance With the Children’s Television Act, Center for Media Education, Sept. 29, 1992.

²⁴ CME Testimony, *supra* at 1 (emphasis supplied in part), *see also* CME “Study” at 3.

IV. The Programming Marketplace is Responding to the Demand for Educational and Informational Programming.

The Commission's *Notice of Inquiry* of March 1993 indicated that there appeared to be "little change" in the amount of educational and informational programming listed on renewal applications. The *Notice* acknowledged that the "slow growth to date" may have been due to a "supply shortage" of available programming, given the "relatively recent" obligation, and went on to request comment on whether this situation would right itself.²⁵

Today, not only is there evidence that a greatly increased amount of educational and informational programming is being aired by stations, but there is evidence that the programming marketplace has responded with a greatly increased availability of educational programs.

This increase in availability can be seen in the three-fold increase in educational programs being cleared in the syndication market, 1990 to 1993, as reported in an analysis conducted by the Association of Independent Television Stations.²⁶ INTV identified eight educational and informational shows that together were "cleared" on 576 stations during the 1990 November sweeps period. By November, 1993, there were 19 such shows "cleared" on 1,746 television stations. And even this analysis underestimates the total number of hours of educational shows available in syndication by not counting programs

²⁵ *Notice of Inquiry, supra.* at 3 and fn. 11.

²⁶ Statement of Peter Walker, June 28, 1994, filed in MM Docket No. 93-48, June 15, 1994, at Exhibit A ("INTV Syndication Study"), here attached as Attachment 4.

that are broadcast five times a week, by counting only programs “everyone” would agree are educational or informational and by not including the locally-produced educational shows that are not syndicated.

The dramatically increasing amount of educational fare being supplied to network affiliates by the four networks can be seen in the hearing submission and chart of Mr. Squire Rushnell.²⁷ Because Mr. Rushnell’s chart showing the supply of network programming over the last twenty years has received so much attention and because there was a question raised at the hearing on the basis of that chart about the networks’ commitment to supplying educational programs for the 1994 season not exceeding that of 1980, NAB undertook an evaluation of Mr. Rushnell’s analysis for those years. That evaluation is attached here as Attachment 5. NAB’s evaluation found several problems with Mr. Rushnell’s methodology and program classification errors, and we reconstructed from Mr. Rushnell’s data a more accurate “apples-to-apples” comparison for 1980 and 1994, which is included as Appendix B to Attachment 5. That comparison shows that, in fact, the networks are supplying more standard-length regularly scheduled educational fare to their affiliates from that supplied for the previous high water mark of 1980.

The trend line of a dramatically increasing supply of educational fare from the networks and the syndication marketplace since 1990 is clear. And, most important to the issues before the Commission, is the fact that stations, which have the obligation under the Act to serve children with educational programming, air substantially more non-network programming for children than they did in 1990.

²⁷ See Attachment 5, Appendix A.

Thus the only truly relevant pictures of broadcasters' compliance with the Act and of what children have available to them from broadcast television is that of what local stations actually air, pictures presented in the NAB Study and the INTV Study submitted in this proceeding. Those pictures, as discussed above, show the kind of increase in educational and informational children's programming called for by the Children's Television Act and the FCC rules.

V. Broadcasters Are Presenting Increased Amounts of Educational and Informational Children's Programming Despite the Low Viewership and Profitability of Educational Shows.

A. Audience Ratings for the Vast Majority of Educational Children's Programs Are Much Lower Than the Ratings for Pure Entertainment Programs.

In order to assess the relative audience sizes of children's programs, NAB has produced a combined ranked listing of network and syndicated shows that were broadcast by local commercial and public television stations during the Fall 1993 ratings period or "sweep," attached here as Attachment 6. For the Fall 1993 "sweep," some 120 children's programs were reported to Nielsen Media Research. The standard Children 2-11 audience rating²⁸ (referred to as Kids 2-11 on the attachment) category was used for ranking the relative size of the children's audience for each of the measured programs.

²⁸ "Rating" is the standard measure of television audience size. A rating of 1 indicates that 1% of the persons in a particular demographic or age group was tuned to a particular program. For the current broadcast year, Nielsen Media Research estimates that there 37,647,000 children in television homes. Therefore, a program with a 5 rating has an children's audience of approximately 1,882,000 kids 2-11, or 5% of total children age 2-11.

The attached ranked listing indicates by shaded lines programs that have been identified as “educational or informational” for purposes of the FCC’s rules by three sources. Those sources are the television networks (as to their network programming), a listing published in *Electronic Media*²⁹ of programs identified by producers and distributors and all PBS children’s programs. This identification is not exhaustive³⁰ nor an “endorsed” one and is provided only to illustrate the comparative audience size of “identified” educational and informational programs with entertainment and general interest children’s shows.

NAB ranked the audience size of children’s programs (expressed as the Kids 2-11 rating on the attachment) from the most popular to the least popular. In this relative ranking, the majority of the programs identified as complying with the Commission’s educational and informational definition fell in the lower portion of the ranking, while the most popular programs tended to be “pure” entertainment or general interest shows. Of the top 25 programs preferred by children between the ages of 2 and 11, just three programs (Fox’s Bobby’s World, PBS’ Barney & Friends and CBS’ Disney’s Little Mermaid) were identified as educational and informational shows. Similarly, just 5 of the identified educational shows rank in the top 50 most popular children’s shows and just 13 of the identified educational programs rank in the top half of the 120 children’s shows

²⁹ *Electronic Media*, June 21, 1993, pp. 41-46.

³⁰ NAB notes, for example, that NAB’s witness at the *en banc* hearing, Paul La Camera of WCVB-TV, in his written testimony identified two shows aired on WCVB as educational that are not shaded on our listing because they were not so identified by the three sources we used. Those shows are *A Likely Story*, produced by WCVB, and *Cappelli & Company*, produced by WCVB’s parent, Hearst Broadcasting. NAB notes that these shows are the 77th and 105th ranked shows, children 2-11.

broadcast last fall. By contrast, no fewer than 14 of the final 25 are educational or informational programs, and most people familiar with the titles would add in several more “educational” shows to this lowest category.

Ratings are a measure of the size of the audience for a program and therefore of its popularity with an audience group. *Power Rangers*, which is telecast Saturday mornings at 11:30 AM on the Fox network, is the most popular children’s program with Kids 2-11. *Power Rangers* attracts approximately 10% (9.9 rating) of children age 2-11, or some 3,727,000 kids, in an average week. In comparison, the highly regarded *Beakman’s World* on CBS attracts fewer than one-third as many children viewers (2.9 rating) just 30 minutes later. As a further indication of the appeal of educational and informational programming, the syndicated *Nick News* on average attracts less than one-half of one percent of the kids in the markets where it appears.

The most popular educational programs with Children 2-11 are Fox’s Bobby’s World on Fox and Barney & Friends on PBS. The average national children’s audience for Bobby’s World is 2,635,000 (7.0 rating) and 2,221,000 (5.9 rating) for Barney & Friends. By contrast, PBS’ Sesame Street (3.0 rating) and CBS’ Storybreak (3.0 rating)—both near the middle of the kids’ ranking—attract less than half as many children viewers.

**B. Audience Ratings Produce the Only Revenue Stream To Pay
For Broadcast Station Programming.**

The above-described audience ratings clearly show that educational and informational shows do not generate large audiences, irrespective of the time of day or day they are broadcast. Peter Walker, General Manager of WGN-TV, Chicago, testified at the

en banc hearing that, no matter what time their show Energy Express was aired, it was not successful.³¹ And, if audiences are not attracted to a show, then it is impossible for a station to attract advertising dollars to fund the program.

The ratings failure of most children's educational shows does not mean that some can not succeed. Mr. Walker estimated that 75% of *all* general entertainment shows fail. But the fact that most educational shows do not attract acceptable audiences and thus lose money means that stations must try more educational shows before acquiring ones that "work," or they must subsidize the shows that may with time "work" or they must simply subsidize their educational program offerings.

If audiences and therefore advertisers are not attracted to a particular children's educational and informational program, then it is impossible for commercial broadcasters to keep airing that program without incurring a financial loss and risk losing viewers from adjacent shows. Broadcasters only revenue stream is from advertisers.³² Consequently, stations must try to produce or acquire some other children's educational and informational show that will be attractive to audiences and advertisers .

Commercial broadcasters are at somewhat of a disadvantage in competing with other media for viewers, since they alone depend upon one revenue stream. Other competitors, including cable networks and public broadcasters, have additional revenue sources such as subscriber and licensing revenues and public and viewer contributions to

³¹ INTV Testimony, *supra*, at 2.

³² To our knowledge, we do not know of any television stations who are receiving a percentage of toy sales revenues from airing particular children's shows, as alleged by Center for Media Education in their anonymous, anecdotal "analysis." See CME "Study," *supra*, at 17-18.

help fund children's programming. Broadcasters must rely on advertising revenues alone to purchase programming, and advertising revenues only flow to programs that generate audiences.

Geraldine Laybourn, President of Nickelodeon, made this point in her recent testimony at the FCC *en banc* hearing. She testified that:

"At Nickelodeon, we are fortunate to have the ability to produce shows that we think are worth producing because we have the luxury of two revenue streams -- one from advertisers and one from affiliates. This puts us in a unique position because we are able to make decisions that are not based solely on advertising revenue."³³

Jonathan Rodgers, President, CBS Television Stations Division, also made the same point: that broadcasters are at a disadvantage to both cable networks and public broadcasters in providing children's educational shows. He testified:

"It is no accident, for example, that much high-quality children's programming is found on PBS, the Nickelodeon cable network and on the Disney Channel. None of these outlets relies exclusively on audience-based advertising sales to survive, so that their audiences need not be nearly as large as advertiser-supported broadcast audiences to make the programming economically viable."³⁴

Given that most of these educational and informational children's programs are unsuccessful in attracting large enough audiences to attract the necessary advertisers, broadcasters are continually being challenged to develop and/or purchase new shows.

³³ Testimony of Geraldine Laybourne, Nickelodeon, Federal Communications Commission *En Banc* Hearing on Children's Television, June 28, 1994, p. 2.

³⁴ Testimony of Johnathan Rodgers, President, CBS Television Stations Division, Federal Communications Commission *En Banc* Hearing on Children's Television, June 28, 1994, p. 4.

The costs of acquiring programming to comply with the Children's Television Act is not insignificant.³⁵ Costs are incurred not only for locally-produced and syndicated programs for which cash payment is made, but also for programs that are pure barter arrangements. Pure bartered children's shows are costly for stations because stations "pay" for barter programming with the only product they sell, advertising inventory. In fact, according to standard accounting procedures as well as the Internal Revenue Service, stations must take account of this "bartered" inventory and treat it as a cost of acquiring bartered programs.³⁶

Broadcasters need to subsidize these investments from other more successful time periods. As a result, proposals requiring a higher minimum number of hours of children's educational and informational programming than a given station airs, and particularly a requirement for weekday programming, would have a negative impact on the ability of stations to invest in these programs. Mr. Rodgers of CBS made this point when he said:

"Thus, program quotas are unnecessary and would be counterproductive. It must also be noted that quotas, at least ones requiring the broadcast of weekday children's programming on network affiliates, would be punitive. To comply with such a requirement, affiliates would either have to displace news programming or some of their most profitable afternoon and evening shows -- which, of course, help contribute the resources necessary for providing children's programming in the first place."³⁷

³⁵ Peter Walker testified that WGN-TV spent close to a million dollars for just twenty-six episodes for Energy Express. See Walker testimony, p. 1.

³⁶ Even if a station decides to cancel a pure barter program, it is still obligated to run the advertising spots provided by the syndicator in the time period agreed to. In those cases the station has the "costs" of acquiring the program but generates no revenues.

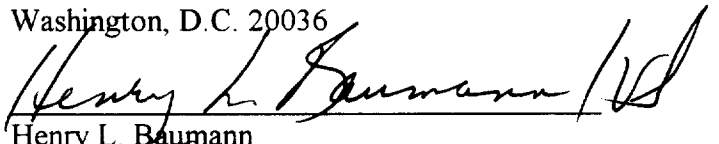
³⁷ Testimony of Jonathan Rodgers, *supra*.

VI. Conclusion

NAB supported the passage of the Children's Television Act. It has participated fully in the Commission's proceedings to develop and review rules implementing the provisions of the Act. It recently conducted a study of the amount of educational and informational programming for children television licensees have presented in response to the Act, both before the Act went into effect and as of last fall, in order to update the record for the Commission. The only other updated study of stations' airing of educational and informational children's programming, that of INTV, similarly shows a dramatic increase in stations' educational offerings. NAB submits that the documented up-to-date record of broadcasters' response demonstrates that broadcasters are complying with both the spirit and the letter of the Children's Television Act. Simply put, the Act and the FCC rules are working.

Respectfully submitted,

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**THE 1990 CHILDREN'S TELEVISION ACT:
ITS IMPACT ON THE AMOUNT OF
EDUCATIONAL AND INFORMATIONAL
PROGRAMMING**

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National Association of Broadcasters

June 28, 1994



EXECUTIVE SUMMARY

The Children's Television Act of 1990 was passed by Congress in order to improve the quality and quantity of children's educational and informational television programming. It has been nearly three years since the Act took effect. It is possible to begin evaluating the impact of the legislation and accompanying regulations. This study, through a survey of commercial television stations, examines the effects of this law in terms of whether there has been any change in the amount of educational and informational programming being aired by commercial television stations. It only examines the core children's programming of over 30 minutes in length. It does *not* examine any of the shorter form programming such as interstitials, program segments, public service announcements primarily oriented towards children, and general programming serving the educational and informational needs of children, all specifically contemplated by the Act.

There has been change in the amount of longer form educational and informational children's programming, due both to policy and marketplace forces. Some of the study's results include:

- The amount of regularly scheduled educational and informational children's programming increased 81% from Fall 1990, the year before the Act took effect, to Fall 1993.
- The average station now airs over 3-1/2 hours (220.81 minutes) of regularly scheduled educational and informational children's programming per week.
- Stations of all affiliation types and independents increased the amount of educational and informational children's programming from Fall 1990 to Fall 1993.
- Television stations in all market sizes increased the amount of educational and informational children's programming from Fall 1990 to Fall 1993.
- Nearly 97% of all regularly scheduled educational and informational children's programming started after 6:00 AM. Over four-fifths (80.6%) started after 7:00 AM.